THE HONOURABLE SRI JUSTICE C.V. RAMULU

WRIT PETITION No.5281 of 1999

DATED: 07.12.2007

Between:

Mrs. Seemen Qureshi

.. Petitioner

And

The Asst. Commissioner of Labour, Hyderabad-cum-the Court of Authority under the Minimum Wages Act, 1948 and another.

.. Respondents

THE HONOURABLE SRI JUSTICE C.V. RAMULU

WRIT PETITION No.5281 of 1999

ORDER:

This writ petition is filed seeking a certiorari to call for the records relating to the order, dated 31.07.1998, passed by the 1st respondent in Case No.MW/38/97, and quash the same as arbitrary, illegal and violative of provisions of the Minimum Wages Act, 1948.

2. It appears, the 2nd respondent – Assistant Labour Officer, Circle No.10, Hyderabad, filed an application, under Section 20 of the Minimum Wages Act, 1948 (for short 'the Act'), before the 1st respondent – Authority under the Act-cum-Assistant Commissioner of Labour, Hyderabad-III, stating that two of the employees, by name Zakeera Begum and Gopi, who are sales girl and helper respectively, of M/s. Sheela Creation Boutique, Banjara Hills, Hyderabad, were not being paid minimum wages as required under the law, and the difference of wages was claimed from the employer, the petitioner herein.

3. Petitioner-employer resisted the said application stating that those two employees were not at all employed by her and, hence, the question of payment of wages does not arise. Further, the application was barred by limitation and, therefore, the same ought not to have been entertained.

4. After considering the oral and documentary evidence before it, the Authority under the Act allowed the application, by the impugned order dated 31.07.1998, and directed the petitioner-employer to deposit the claim amount along with compensation of five times of claim amount. Aggrieved by the same, the present writ petition has been filed by the petitioner-employer.

5. Learned counsel for the petitioner strenuously contended that the application, under Section 20 of the Act, is not maintainable, since there was no relationship of master and servant between the petitioner and the so called employees and they have nothing to do with the petitioner's concern. Further, there was abnormal delay of 1½ years in filing the said petition, under Section 20 of the Act. A limitation of period of six months is stipulated for filing an application under Section 20 of the Act and, if any application needs to be entertained beyond the said period of six months, it must be accompanied by a petition to condone the delay caused in filing the application, duly furnishing reasons. No such petition was filed in the instant case. Ignoring the same, the Authority entertained the application and directed to pay five times of the claim amount as compensation, which is unreasonable.

6. Per contra, learned Government Pleader appearing for the respondents supported the order passed by the Authority under the Act and contended that it is the duty of the petitioner-employer to pay minimum wages, as applicable under the law, to her employees and, since they were not paid, it must be deemed that she has violated the law. Therefore, she is liable to pay the employees not only the difference of wages, but also the penalty/compensation imposed by the Authority. Thus, the Authority has not committed any error in

passing the impugned order and no interference is called for by this Court.

7. I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the impugned order and other material made available on record.

8. At the outset, I am of the opinion that there is no illegality in the impugned order passed by the Authority under the Act, calling for interference of this Court under Article 226 of the Constitution of India. When an application under Section 20 of the Act has been filed, seeking difference of wages liable to be paid to the employees, and the employer resisted the same stating that they were not his employees, the burden lies on the employer to establish the said fact. In the instant case, no such efforts have been made by the petitioner to prove that those two persons were not her employees. On the basis of the evidence available on record, the Authority has rightly come to the conclusion that those two persons were employed by the petitioner and were not paid minimum wages as required under the law. However, since there was delay in filing the application, the Authority ought not to have directed the employer to pay five times of the claim amount as compensation, and, in my opinion, the ends of justice would be met if one time of the claim amount is ordered to be paid as compensation.

9. In the result, the impugned order, dated 31.07.1998, passed by the 1st respondent – Authority under the Act, is modified insofar as imposition of compensation of five times of claim amount, by reducing the same to that of compensation of one time of claim amount.

10. With the above modification, the writ petition is disposed of. No

order as to costs.

JUSTICE C.V. RAMULU

7th December, 2007.
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